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Economic Commission for Europe**Inland Transport Committee****Working Party on Inland Water Transport****Fifty-third session**

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Agenda item 7 (c)

Harmonization of the legal framework for international inland water transport**The 1988 Strasbourg Convention on Limitation of Liability
in Inland Navigation**

Submitted by the Central Commission for the Navigation of the Rhine

Note by the secretariat:

In the context of the discussions on the possibility of introducing a common legal regime for the limitation of the liability of owners of inland navigation vessels on a Europe-wide basis, and following a decision by the Working Party to follow the work done by Central Commission for the Navigation of the Rhine (CCNR) for the revision of the 1988 Strasbourg Convention on Limitation of Liability in Inland Navigation (ECE/TRANS/SC.3/178, para. 29), the secretariat reproduces in the annex to this document the latest version of the preliminary draft additional protocol to the Convention. The Working Party may wish to discuss the draft additional protocol and to inform member States of the usefulness of revising the Convention for the international legal framework for inland navigation.

Annex

Preliminary draft additional protocol to the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation

I. Introduction

1. The draft protocol takes account of the discussions held at the November 2007, April 2008 and October 2008 and June 2009 meetings. A final meeting scheduled for 16 October 2009, from 9 a.m. to 3 p.m., will be held to finalize the present draft. The points still to be agreed include the following:

A. New amounts for liability: art. 3 of the protocol

2. With regard to article 3 (a): two options have been proposed, corresponding to an increase in the original amounts by 75 per cent (position expressed by Belgium and Netherlands in October 2008), 50 per cent (position expressed in June 2009 by Belgium, Netherlands, Slovakia, Hungary and Czech Republic) and by 100 per cent (position expressed by Germany, France, Luxembourg and Switzerland), respectively.

3. With regard to article 3 (b): three options have been proposed:

(a) Using the same wording as in the original CLNI (half the amounts laid down in article 3 (a));

(b) Using the wording of article 3 (a) and adopting amounts representing an increase of 50 per cent over the current CLNI, corresponding to taking inflation into account.

4. With regard to article 3 (d): the Working Party should discuss the need to reassess the amounts adopted under this article, in view of the increases agreed under articles 3 (a) and 3 (b).

B. Limitation of liability for physical injury caused to passengers, while giving States parties the possibility of issuing a reservation

5. With regard to article 4 and article 6 (2) of the protocol: the Working Party decided to adopt the amount of SDR 175,000, corresponding to the amount used in the 1996 LLMC. It was also agreed to maintain an absolute lower limit, which would be increased by 50 per cent over the current CLNI to take account of inflation (amount of 1,080,000 SDR).

6. Concerning the absolute upper limit, four options have been proposed:

(a) Option 1: Deletion of any absolute upper limit (same solution as in 1996 LLMC);

(b) Option 2: Maintaining the limits of the 1988 CLNI, increased by 50 per cent to take account of inflation;

(c) Option 3: Maintaining the limits of the 1988 CLNI, increased by 50 per cent, for cabin vessels only;

(d) Option 4: Maintaining the limits of the 1988 CLNI only for vessels authorized to carry more than a certain number of passengers, still to be determined.

7. In each case, there is provision for the States parties to issue a reservation, as long as the limit of liability prescribed by their national legislation is not less than that laid down by the Additional Protocol (article 6 (2) of the protocol). This reservation could be clarified regarding its application to the limits applicable to daily excursion vessels, in accordance with the wording proposed in secretariat document CLNI/EG(09)1.

C. Scope of application of CLNI

8. With regard to article 5 of the protocol/article 15 of CLNI:

(a) Article 5 (1): The proposal by the French delegation (CLNI/EG/(09)7, *inter alia*, to make reference to waterways subject to an international navigation regime, was well received by the group of experts and has been incorporated in this draft;

(b) Article 5 (2): Some States wished to avoid the reference to ECE resolution No. 30 of 12 November 1992; to this end, alternative wording has been proposed in document CLNI/EG(09)10.

II. Preliminary draft additional protocol to the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation¹

9. Below is the text of the preliminary draft additional protocol to the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation, produced under the auspices of the Central Commission for the Navigation of the Rhine, to facilitate accession by non-signatory States.

Additional protocol to the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation

The States parties to this Protocol,

Convinced of the utility of harmonizing the law applicable to the limitation of liability in inland navigation on all waterways,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the term “Convention” shall mean the Convention on the Limitation of Liability in Inland Navigation (CLNI), adopted at Strasbourg in 1988.

Article 2

Article 3 of the Convention to read as follows:

The rules of this Convention shall not apply to:

(a) Claims for salvage, including, where applicable, any claim for special compensation under article 14 of the current version of the International Convention on Salvage, of 1989, or claims for contribution in general average;

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- (b) Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (c) Claims against the owner of a nuclear vessel for nuclear damage;
- (d) Claims by servants of the vessel owner or salvor whose duties are connected with the vessel or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the vessel owner or salvor and such servants, the vessel owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in article 6;
- (e) Claims against the owner of a sport or pleasure craft, or a vessel used in navigation for non-profit purposes.

Article 3

Replace article 6, paragraph 1, of the Convention with the following text:

1. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:

- (a) In respect of claims for loss of life or personal injury,
 - (i) For a vessel not used for cargo, in particular a passenger vessel, [300/350/400] units of account per cubic metre of displacement at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by [1050/1222/1400] units of account per kW of power of the machines providing the propulsion;
 - (ii) For a cargo vessel, [300/350/400] units of account per tonne of the vessel's deadweight, increased for vessels equipped with mechanical means of propulsion by [1050/1222/1400] units of account per kW of power of the machines providing the propulsion;
 - (iii) For a pusher or tug, [1050/1222/1400] units of account per kW of power of the machines providing the propulsion;
 - (iv) For a pusher which, at the moment when the damage was caused, was coupled to barges in a pushed train, the amount of liability calculated in conformity with (iii) shall be increased by [150/175/200] units of account per tonne of deadweight of the pushed barges; this increase shall not apply insofar as it can be proved that the pusher has provided salvage services to one or more of these barges;
 - (v) For a vessel equipped with mechanical means of propulsion which at the time when the damage was caused was providing propulsion for other vessels coupled to this vessel, the amount of liability calculated in conformity with (i), (ii) or (iii) shall be increased by [150/175/200] units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply insofar as it can be proved that this vessel has furnished salvage services to one or more of the coupled vessels;
 - (vi) For floating and mobile appliances or plant in the sense used in the second sentence of article 1, paragraph 2 (b), their value at the time of the occurrence;

(b) **Option 1:**

In respect of all other claims, half of the sums mentioned in (a);

Option 2:

(i) For a vessel not used for cargo, in particular a passenger vessel, [150] units of account per cubic metre of displacement at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by [525] units of account per kW of power of the machines providing the propulsion;

(ii) For a cargo vessel, [150] units of account per tonne of the vessel's deadweight, increased for vessels equipped with mechanical means of propulsion by [525] units of account per kW of power of the machines providing the propulsion;

(iii) For a pusher or tug, [1525] units of account per kW of power of the machines providing the propulsion;

(iv) For a pusher which, at the moment when the damage was caused, was coupled to barges in a pushed train, the amount of liability calculated in conformity with (iii) shall be increased by [75] units of account per tonne of deadweight of the pushed barges; this increase shall not apply insofar as it can be proved that the pusher has provided salvage services to one or more of these barges;

(v) For a vessel equipped with mechanical means of propulsion which at the time when the damage was caused was providing propulsion for other vessels coupled to this vessel, the amount of liability calculated in conformity with (i), (ii) or (iii) shall be increased by [75] units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply insofar as it can be proved that this vessel has furnished salvage services to one or more of the coupled vessels;

(vi) For floating and mobile appliances or plant in the sense used in the second sentence of article 1, paragraph 2 (b), their value at the time of the occurrence;

(c) When the amount calculated in accordance with (a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph (b) shall be available for payment of the unpaid balance of claims under paragraph (a), and such unpaid balance shall rank rateably with claims mentioned under paragraph (b);

(d) [In no case shall the limits of liability be less than 200,000 units of account for claims in respect of loss of life or personal injury or less than 100,000 units of account for all other claims.]²

Article 4

Article 7, paragraph 1, of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a vessel, the limit of liability of the owner thereof shall be an amount of 175,000 units of account, multiplied by the number of passengers which the vessel is authorized to carry according to the vessel's certificate, or, if the number of passengers which the vessel is authorized to carry is not prescribed, this limitation shall be determined by the number of passengers actually carried by the vessel at the time of the occurrence.

Option 1:

The limits shall not be less than 1,080,000 units of account.

² Amounts subject to negotiation.

Option 2:

The limits shall not be less than 1,080,000 units of account, or more than 18 million units of account.

Option 3:

The limits shall not be less than 1,080,000 units of account, or more than 18 million units of account, for passenger vessels with cabins, or more than 12 million units of account, for daily excursion vessels.

For the purpose of this article “daily excursion vessels” shall mean passenger vessels without cabins for the overnight accommodation of passengers.

For the purpose of this article “passenger vessels with cabins” shall mean passenger vessels with cabins for the overnight accommodation of passengers.

Option 4:

The limits shall not be less than 1,080,000 units of account, or more than ... units of account, for vessels with an authorized passenger transport capacity of more than ...

Article 5

Article 15, paragraphs 1 and 2, of the Convention to read:

1. This Convention shall apply to the limitation of liability of the owner of a vessel or a salvor when, at the time of the occurrence giving rise to the claims:

[(a) The vessel is sailing on a waterway subject to an international navigation regime or on a waterway in the territory of a Contracting State; or]

(b) Salvage services have been furnished along one of the said waterways to a vessel in danger or the cargo of such a vessel; or

(c) A vessel sunk, wrecked, stranded or abandoned along one of the said waterways, or the cargo of such a vessel, has been raised, removed, destroyed or rendered harmless.

This Convention shall also apply to the limitation of liability of a salvor furnishing assistance services from an inland navigation vessel to a seagoing vessel in danger along one of the said waterways, or the cargo of such a vessel.

2. Any State may, at the time of signature, ratification, acceptance, or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments, or at any subsequent time, declare by means of a notification addressed to the depositary that this Convention shall not be applicable to waterways class III or lower. For the purposes of this protocol, the classification of European waterways established by ECE resolution No. 30 of 12 November 1992³ shall be applicable. The notification shall take effect on the first day of the month following the expiry of a period of three months following the receipt of the notification or, if this Convention has not yet entered into force, on its entry into force.

³ <http://www.unece.org/trans/doc/finaldocs/sc3/TRANS-SC3-131e.pdf>.

Article 6

Replace article 18 of the Convention with the following text:

1. Any State may, at the time of signature, ratification, acceptance, or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments, or at any subsequent time, reserve the right to exclude the application of the rules of this Convention in their entirety or in part:

(a) To claims for damage due to a change in the physical, chemical or biological quality of the water;

(b) To claims for damage caused by dangerous goods during their carriage, insofar as such claims are governed by an international convention or domestic law which excludes the limitation of liability or sets limits of liability higher than provided for in this Convention;

(c) To claims mentioned in article 2, paragraph 1 (d) and (e), of the Convention;

(d) To lighters exclusively used in ports for trans-shipments.

2. Any Contracting State may, at the time of signature, ratification, acceptance or approval of this Convention or of a protocol additional to this Convention, or upon accession to one of these instruments or at any subsequent time, declare that it will not apply, to claims resulting from an occurrence on its waterways, the maximum limits of liability provided for in article 7, paragraph 1, if such claims are subject to an international convention or to the national requirements of that State, which exclude the limitation of liability or set limits on liability that are higher than those set out in this Convention.

3. A State that makes use of the possibility provided in paragraph 1 (b) or paragraph 2 shall inform the depositary of the limits of liability adopted, or that there are no provisions for such limits.

4. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

5. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the depositary. The withdrawal shall take effect on the date the notification is received, or on a later date specified therein.

Article 7

Replace article 20, paragraph 4, of the Convention with the following text:

4. Any decision to revise the limitation amounts provided for in articles 6 and 7 or to replace the unit of account mentioned in article 8 shall be taken by a two-thirds majority of the Contracting States present and voting, provided that at least half the Contracting States to this Convention are present at the time of voting.

Article 8

Uniform instrument

1. The Convention and this Protocol shall be considered and interpreted as constituting a single instrument between the Parties to this Protocol.

2. A State which is a Party to this Protocol but is not a Party to the Convention shall be bound in respect of the other States Parties to this Protocol by the provisions of the Convention as amended by this Protocol.

3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences subsequent to the entry into force, for each State, of this Protocol.

Article 9

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature from ... to ..., at the headquarters of the Central Commission for the Navigation of the Rhine at Strasbourg.

2. States may express their consent to be bound by this Protocol by:

(a) Signature without reservation as to ratification, acceptance or approval; or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

(3) A reservation formulated by a Contracting State to the Convention shall also remain valid in respect of States signatories to this Protocol when the reservation concerns provisions that are not changed by the Protocol, and when the State that has formulated the reservation does not withdraw it during the deposit of the instruments of ratification, acceptance, approval or accession to this Additional Protocol.

(4) Ratification, acceptance, approval and accession shall take place through the deposit of a formal instrument with the Secretary-General of the Central Commission for the Navigation of the Rhine.

Article 10

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiry of a period of three months as from the date on which all the States Parties to the Convention [on the date of the adoption of this Protocol] deposit their instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession after all the conditions for the entry into force of this Protocol have been met, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months as from the date of the deposit of the instrument.

Article 11

Denunciation

1. This Protocol may be denounced by any of the States Parties by a notification addressed to the depositary, at any time after one year from the date on which the Protocol entered into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Central Commission for the Navigation of the Rhine.

3. Denunciation shall take effect on the first day of the month following the expiry of a period of one year from the date on which the notification is received, or after such longer period as may be specified therein.

4. In the relations between the States Parties to this Protocol, denunciation of the Convention by any of the States Parties under article 19 of the said Convention shall under no circumstances be interpreted as denunciation of the Convention as amended by this Protocol.

Article 12

Depositary

1. This Protocol shall be deposited with the Secretary-General of the Central Commission for the Navigation of the Rhine.

2. The Secretary-General shall:

(a) Transmit certified true copies of this Protocol to all the signatory States and to all States which accede to it;

(b) Inform all States which have signed or acceded to this Protocol of:

(i) Each new signature and each deposit of an instrument, and any declaration or reservation thereto, together with the date thereof;

(ii) The date of entry into force of this Protocol;

(iii) Any denunciation of this Protocol, and the date on which it takes effect;

(iv) Any amendment deemed to have been accepted under article 20, paragraph 5, of the Convention, and the date on which the amendment enters into force, in conformity with article 20, paragraph 6, of the Convention;

(v) Any communication called for by any provision of the Convention or this Protocol.

Article 13

Languages

This Protocol is established in a single original in the Dutch, French and German languages, all the texts being equally authentic.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Strasbourg, on ...
